IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1544 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJ STATE ROAD TRANSPORT CORPN

Versus

PINAKIN SHANABHAI MAKWANA

Appearance:

1. Special Civil Application No. 1544 of 1994

MR SK BUKHARI for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 06/05/2004

ORAL JUDGEMENT

1. The petitioner by way of this writ petition under Article 227 of the Constitution of India challenges the

award dated 3rd September, 1993 passed by the Labour Court, Nadiad, whereby the respondent workman was ordered to be reinstated in service with 50% back wages.

2. It is contended by the leaned advocate for the petitioner that there was unauthorised absenteeism on the part of the respondent - workman for the period running from 21st January, 1989 to 6th April, 1989. Because of this unauthorised leave, the charge sheet was issued to the respondent - workman and the departmental inquiry was conducted. On the basis of the report of the Inquiry Officer, the services of the respondent - workman were brought to an end by the petitioner with effect from 21st January, 1989.

3. It is contended by the learned advocate appearing for the petitioner that the departmental inquiry was legal and valid and the punishment awarded to the respondent - workman of termination of services is not reasonably inexcessive nor the same is essentially disproportionate to the nature of the misconduct. This aspect of the matter has not been appreciated by the Labour Court, Nadiad and hence the award passed by the Labour Court deserves to be quashed and set aside.

4. The learned advocate appearing for the respondent - workman submits that unauthorised absenteeism of the respondent - workman was due to his sickness. The respondent - workman was sick and therefore he could not attend his duty and for that report was sent to the petitioner authority supported by the medical certificate. In view factum of sickness, procedure of leave report and the proof of medical sickness namely the medical certificate given to the petitioner authority i.e. in presence of three aspects of the matter, it cannot be said that the absenteeism of the respondent workman was for no reason just and proper at all and the same was unauthorised. On the contrary, for the absenteeism 70 days, enough punishment has been awarded by deducting 50% of back wages by the award of the Labour Court and the respondent - workman accepts the award of the Labour Court, taking 50% of the back wages deducted for absenteeism due to sickness of the respondent - workman.

5. I have gone through the facts of the case and looking to the nature of the charges levelled against the respondent - workman which is of absenteeism of 70 days from the service, the reasons advanced by the respondent - workman was sickness and the report was submitted by the respondent - workman, coupled with the medical

certificate. The petitioner authority has not challenged the fact that the report of leave was sent by the respondent - workman. Neither the petitioner authority has challenged the correctness of the medical certificate. Before the Labour Court even the respondent - workman was not remained present before the Inquiry Officer due to his sickness and for that also the report was submitted by the respondent - workman during the inquiry vide report dated 1st June, 1989. Thus, in absence of any contrary proof, the medical certificate submitted by the respondent - workman or his absenteeism from 21st January, 1989 to 6th April, 1989 i.e. 70 days is not misconduct much less of high grave in nature which warrants termination of services of the respondent workman. The Labour Court has rightly arrived at the conclusion of reinstatement with 50% back wages. Deduction of 50% back wages is legal, valid, just and proper. Deduction of 50% back wages for sickness of the respondent - workman is more than sufficient when he has already been reinstated by the petitioner in April, 1994. The question before me is only regarding deduction of 50% back wages. I see no reason to take any deviation from the conclusion arrived at by the Labour Court. There is no error apparent on the face of the record. Second view based on the facts is not permissible looking to over all facts and if the second view is permissible as per the principle enunciated by the Hon'ble Supreme Court under Article 227 of the Constitution of India, the view cannot be changed than what is taken by the Labour Court.

6. Thus, thus award passed by the Labour Court is legal, valid and proper and in consonance with the law. There is no error apparent on the face of the record. Therefore, the petition fails and is accordingly dismissed. Rule is discharged, with no order as to costs. Interim relief granted by this Court stands vacated. The petitioner authority is directed to make payment of remaining 50% back wages to the respondent workman, within a period of three months from the date of receipt of writ of this Court.

(D.N. Patel, J.)

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